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Paper No. 7

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In re Application of
Randall S. Marshall
Application No. 09/422,107
Filed: October 20, 1999

: **OFFICE OF PETITIONS**
: **A/C PATENTS**
: DECISION ON PETITION
:

This is a decision on the petition under 37 CFR 1.137(b), filed June 14, 2001, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to timely file a reply to the non-final Office action mailed September 25, 2000, which set a shortened statutory period for reply of three (3) months. No extension of time for reply available to petitioner under 37 CFR 1.136(a) was obtained within the allowable period. The application, therefore, became abandoned on December 26, 2000. A Notice of Abandonment was mailed on April 16, 2001.

It is noted that petitioner filed a petition for an extension of time within the third month on March 28, 2001, and that the extension was not granted, in part, because sufficient funds were not remitted for its procurement. Petitioner is also advised that an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). In this case, the maximum extendable period ended at midnight on March 25, 2001. Accordingly, since the petition for extension of time was filed on March 28, 2001, (without the benefit of a certificate of mailing) petitioner would not have been able to obtain the extension of time even if sufficient funds were remitted for its procurement. Therefore, the amount of \$222.50, which petitioner remitted March 28, 2001, will be refunded to petitioner in due course.

The application is being forwarded to Technology Center 3700 for review of the amendment filed on June 14, 2001.

Telephone inquiries concerning this decision should be directed to Kenya A. McLaughlin, Petitions Attorney, at (703) 305-0010.



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